



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

TJR
Docket No: 5246-99
8 February 2000

[REDACTED]

Dear [REDACTED]:

This is in reference to your application for correction of your naval record pursuant to the provisions of Title 10, United States Code, Section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 19 January 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record, and applicable statutes, regulations, and policies.

After careful and conscientious consideration of the entire record, the Board found the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board found you reenlisted in the Navy on 26 December 1973 after 15 years of prior honorable service. Your record shows that approximately three months later, on 13 March 1974, you were convicted by special court-martial (SPCM) of wrongful appropriation of government funds and sentenced to confinement at hard labor for a month and reduction to paygrade E-5.

Your record contains two enlisted performance (page 9) entries which indicate that you received nonjudicial punishment on 21 March and 26 August 1975. However, your record does not contain any information regarding the offenses for which you received NJP or the punishment imposed.

On 13 February 1976 you began a 61 day period of unauthorized absence (UA) that was not terminated until you were apprehended by civil authorities on 22 June 1976. Less than a month later, on 15 July 1976 you began a 151 day period of UA that was not terminated until you were apprehended by the Federal Bureau of Investigation (FBI). During both of these periods of UA you were declared a deserter.

Subsequently, you submitted a written request for an undesirable discharge for good of the service in order to avoid trial by court-martial for the foregoing periods of UA totalling 212 days. Prior to submitting this request, you consulted with a qualified military lawyer at which time you were advised of your rights and warned of the probable adverse consequences of accepting such a discharge. Your request was granted and your commanding officer was directed to issue you an other than honorable discharge by reason of the good of the service. As a result of this action, you were spared the stigma of a court-martial conviction and the potential penalties of a punitive discharge and confinement at hard labor. On 16 February 1977 you were so discharged.

The Board, in its review of your entire record and application considered all mitigating factors, such as your prior honorable service and your contention that you would like your discharge upgraded. The Board also considered your contention that you were having family problems and began to drink heavily. However, the Board found the evidence and materials submitted were not sufficient to warrant recharacterization of your discharge given your record of misconduct, i.e., court-martial conviction and two NJPs, and your request for discharge to avoid trial for your two lengthy periods of UA. The Board believed that considerable clemency was extended to you when your request for discharge to avoid trial by court-martial was approved since, by this action, you escaped the possibility of confinement at hard labor and a punitive discharge. Further, the Board concluded that you received the benefit of your bargain with the Navy when your request was granted and you should not be permitted to charge it now. Accordingly, your application has been denied.

The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director